

ESTTA Tracking number: **ESTTA172590**

Filing date: **11/02/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Abbott Laboratories
Granted to Date of previous extension	11/04/2007
Address	100 Abbott Park Road Abbott Park, IL 60064 UNITED STATES
Attorney information	Raymond I. Geraldson, Jr. Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 South Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES rig@pattishall.com, dbl@pattishall.com, ksk@pattishall.com Phone:312.554.8000

Applicant Information

Application No	77007953	Publication date	05/08/2007
Opposition Filing Date	11/02/2007	Opposition Period Ends	11/04/2007
Applicant	BioCare Direct, Inc. 16410 N. 91st St., Suite 110 Scottsdale, AZ 85260 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2106719	Application Date	07/16/1996
Registration Date	10/21/1997	Foreign Priority Date	NONE
Word Mark	MERIDIA		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1996/04/23 First Use In Commerce: 1996/04/23 pharmaceutical preparation for the treatment of obesity

Attachments	ksknotice.PDF (4 pages)(124889 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/KristenSKnecht/
Name	Kristen S. Knecht
Date	11/02/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter of Application Serial No. 77/007,953: MERIDIUM XN
Published in the *Official Gazette* on May 8, 2007, Page TM 311 in Class 5

ABBOTT LABORATORIES,)	
)	
Opposer,)	
v.)	Opposition No.
)	
BIOCARE DIRECT, INC.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Abbott Laboratories ("Opposer"), an Illinois corporation, having its principal place of business at 100 Abbott Park Road D377/AP6A, Abbott Park, Illinois 60064, believes it will be damaged by registration of the mark shown in Application Serial No. 77/007,953, and opposes the same.

The grounds for opposition are as follows:

1. Opposer and its predecessor in interest have for many years been engaged in the manufacture, distribution, advertising and sale of a wide variety of nutritional and pharmaceutical products, including products used to treat obesity.

2. Since long prior to the filing date of the intent-to-use application opposed herein, Opposer and its predecessor in interest have continually used the mark MERIDIA in interstate commerce in connection with the advertising, promotion and sale of pharmaceutical products, including products used to treat obesity.

3. Opposer owns valid and subsisting United States Trademark Registration No. 2,106,719 for the trademark MERIDIA for "pharmaceutical preparation for the treatment of obesity."

4. Prior to the filing date of the opposed application, the above registration became incontestable under 15 U.S.C. § 1065 and the certificate of registration thereof constitutes "conclusive evidence" of "the validity of the registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use of the mark in connection with the goods or services specified in the registration." 15 U.S.C. § 1115.

5. Opposer has sold many millions of dollars worth of goods under its MERIDIA mark throughout the United States, and has spent substantial sums advertising and promoting its MERIDIA products throughout the United States.

6. By virtue of its extensive sales, advertising and promotion, Opposer's MERIDIA mark has become extremely well-known throughout the United States, and Opposer now owns immensely valuable goodwill symbolized by its MERIDIA mark.

7. On September 26, 2006, Applicant filed an intent-to-use application to register the mark MERIDIUM XN in International Class 5 for "dietary and nutritional supplements," Serial No. 77/007,953.

8. On information and belief, Applicant's MERIDIUM XN goods are promoted as treating metabolic stress and metabolic syndrome, which Applicant alleges are precursors to obesity.

9. Upon information and belief, neither Applicant nor any predecessor, successor or related company of Applicant has any basis for claiming rights in MERIDIUM XN in connection

with the applied for goods prior to September 26, 2006, the filing date of the application opposed herein.

10. Applicant's application to register MERIDIUM XN is without Opposer's consent.

11. Applicant's use of MERIDIUM XN for the applied for goods is likely to cause confusion, mistake or deception with Opposer and its MERIDIA mark and is likely to cause purchasers and others erroneously to believe that Applicant's goods are Opposer's goods or that Applicant or its goods are in some way legitimately connected with, sponsored or approved by Opposer.

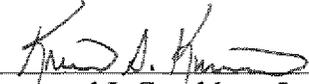
12. Accordingly, Applicant's registration of MERIDIUM XN would be damaging to Opposer.

WHEREFORE, Opposer prays that its opposition be sustained and registration of Application Ser. No. 77/007,953 be refused.

Opposer herein submits the requisite filing fee of \$300. Please debit any deficiency or credit any overpayment to Account No. 16-0650. Please address all correspondence to Raymond I. Geraldson, Jr., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Dated: November 2, 2007

By: 
Raymond I. Geraldson Jr.
Danielle B. Lemack
Kristen S. Knecht
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Kristen S. Knecht, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Jeffrey A. Babener, Esq., Babener & Associates, 121 SW Morrison Street, Suite 1020, Portland, Oregon 97204-3140, via first-class mail, postage pre-paid, on this 2nd day of November, 2007.

